



Montana Legislative Services Division

Legal Services Office

Date: December 16, 2003
To: Property Tax Exemption Study Committee
From: Lee Heiman, Staff Attorney
Subject: Origins of Exempt Classes in 15-6-201, MCA

Section 15-6-201, MCA, was originally enacted in 1891 to implement Article XII, section 2, 1889 Montana Constitution. The 1889 Constitution severely limited the Legislature's authority to establish exemptions to property taxes, so the section did not change much over the ensuing 83 years. Under the 1889 Constitution, the Legislature had the authority to set classes of property and establish rates for each class. They did establish some classes in which the rate was very low as an alternative to exempting that property. With the adoption of the 1972 Montana Constitution, the Legislature was given wide latitude to exempt property from taxation. Since that time, section 15-6-201, MCA, has been amended considerably. The version annotated below is the 2003 version.

The text of current law is shown in italics, comments follow normal type.

15-6-201. Exempt categories. *(1) The following categories of property are exempt from taxation:*

- (a) except as provided in 15-24-1203, the property of:*
 - (i) the United States, except:*
 - (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or*
 - (B) as provided in 15-24-1103;*

Property of the United States is exempt under the U.S. Constitution and was exempt under the 1889 Montana Constitution.

The exceptions under sections 15-24-1103 and 15-24-1203, MCA, refer to the beneficial use tax, which provides that federally owned property used commercially, such as under a lease, is a property right subject to property taxation. The power line owned by Bonneville Power Authority for transmitting Colstrip power was, in part, the subject of subsection (1)(a)(i)(A).

- (ii) the state, counties, cities, towns, and school districts;*
- (iii) irrigation districts organized under the laws of Montana and not operating for profit;*
- (iv) municipal corporations;*
- (v) public libraries; and*
- (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;*

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

Carryover exemptions from the 1889 Constitution. Exempts state governmental and other public entities basically because they are supported by taxation and it is illogical to also tax them. In the 1972 Constitutional Convention deliberations, the exemptions for churches (and the educational entities in subsection (1)(c) below) were left because they were exempted under the 1889 Constitution. There was no discussion of problems with these exemptions because the delegates considered them owned by "non-profit making" owners, and thus the type of property that should be exempted.

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

The exemption for "agricultural and horticultural societies" was originally in the 1889 Constitution, but it was not carried forward into the 1972 Constitution. The delegates really didn't know what they were but felt that if an exemption was really needed they could be statutorily exempted under the 1972 Constitution.

The references to specific licensed nonprofit health care facilities replaced a reference to "hospitals" that carried over from the 1889 Constitution.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

Carried over from the 1889 Constitution, which specifically exempted nonprofit places of burial.

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

Carried over from the 1889 Constitution exemption for property owned by institutions of purely public charity and expanded in 1995 to allow for leased governmental land.

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

Carried over from the 1889 Constitution to avoid double taxation of property.

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

Carried over directly from the 1889 Constitution. Defined in subsection (2)(b). Added "zoos" in 1991 because of Zoo Montana and at the same time inserted "museums".

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

First of the exemptions made under the 1972 Constitution. Exempted household goods and personal property used for personal or domestic purposes. In 1972 Constitutional Convention transcripts, this was the most unwieldy and most ignored of the classes of property subject to taxation.

(i) truck canopy covers or toppers and campers;

Truck canopy covers of less than 300 pounds without accommodations were exempted in 1977. Campers were exempted in 1997 (and 1987) as part of the fee in lieu of tax on motor vehicles, trailers, and campers.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

In 1979 motor vehicle definitions were revised placing the definition of bicycle within that of motor vehicles in Title 61. This exemption was added to ensure that bicycles were not taxed as motor vehicles.

(k) motor homes;

Inserted when motor homes became subject to a fee in lieu of taxes instead of property taxes.

(l) all watercraft;

Inserted when watercraft became subject to a fee in lieu of taxes instead of property taxes.

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

Added in 1983 to exempt property of certain companies that furnish potable water.

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

Added in 1983 to exempt right of entry for mineral exploration.

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

Originally added in 1983 "to clarify" that the property of nonprofit organizations that own and operate facilities for the care of the developmentally disabled, mentally ill, and vocationally handicapped are exempt.

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

In 1991 moved this provision up from the definition of "purely public charity" and rewrote that definition. Made the exemption somewhat more explicit.

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

Added in 1985 as part of an overhaul of the way agricultural property is valued.

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

Added in 1987 for the United States High Altitude Sports Center in Butte.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

Added in 1989 to exempt hand tools.

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

Added in 1999 to encourage the development, manufacture, and launch of NASA's next generation space vehicle in the state.

(s) harness, saddlery, and other tack equipment;

Added in 1989. Removed from Class 16, noncommercial personal property, which was then taxed at 11%.

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

Added in 1989. Also disallowed depreciation on the title plant for income tax purposes.

(u) timber as defined in 15-44-102;

Added in 1991 as part of the overhauling of the taxation of timber by classifying timberlands rather than taxing standing timber on land.

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

Added because these items are subject to a fee in lieu of tax.

(w) all vehicles registered under 61-3-456;

Added because the vehicles are subject to a fee in lieu of tax.

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

Added in 1997. The vehicles are subject to a fee in lieu of tax.

(y) motorcycles and quadricycles;

Added because the vehicles are subject to a fee in lieu of tax.

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

- (i) 31% for tax year 2003;*
- (ii) 31.4% for tax year 2004;*
- (iii) 32% for tax year 2005;*
- (iv) 32.6% for tax year 2006;*
- (v) 33.2% for tax year 2007;*
- (vi) 34% for tax year 2008 and succeeding tax years;*

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

- (i) 13% for tax year 2003;*
- (ii) 13.3% for tax year 2004;*
- (iii) 13.8% for tax year 2005;*
- (iv) 14.2% for tax year 2006;*
- (v) 14.6% for tax year 2007;*
- (vi) 15% for tax year 2008 and succeeding tax years;*

The "homestead" and "comstead" exemptions used to avoid increases in value caused by cyclical reappraisal.

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

Added in 1999 to encourage industrial-type dairies in the state. The dairies were to feed the cows agricultural by-products, such as sugar beets, to produce milk for cheese and other processed milk products.

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

- (i) the acquired cost of the personal property is less than \$15,000;*
- (ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and*
- (iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;*

Added in 1999 as part of an economic development package that was aimed at reducing business property taxes.

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

Added in 2001 to encourage the manufacture of ethanol.

(ee) light vehicles as defined in 61-1-139; and

Added by referendum when light vehicles became subject to a fee in lieu of tax.

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

- (i) all agricultural implements and equipment;*
- (ii) all mining machinery, fixtures, equipment, tools, and supplies;*
- (iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;*
- (iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;*
- (v) all goods and equipment that are intended for rent or lease;*
- (vi) special mobile equipment as defined in 61-1-104;*
- (vii) furniture, fixtures, and equipment;*
- (viii) x-ray and medical and dental equipment;*
- (ix) citizens' band radios and mobile telephones;*
- (x) radio and television broadcasting and transmitting equipment;*
- (xi) cable television systems;*
- (xii) coal and ore haulers; and*
- (xiii) theater projectors and sound equipment.*

Added in 1999 as part of an economic development package that was aimed at reducing business property taxes. This section is to become effective if the employment trigger in section 15-6-138, MCA, causes business personal property become exempt from taxation.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that

term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

Part of original, but amended several times to ensure that the exclusion is narrowly construed.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;*
- (ii) held for future display; or*
- (iii) used to house or store a public display.*

Part of original, but amended somewhat to allow museums and zoos.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

Added in 1999 to encourage industrial-type dairies in the state. Provides some structure in definitions.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

- (a) \$20,000 in the case of a single-family residential dwelling;*
- (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.*

Added in 1979 to encourage the use of nonfossil energy generation.